S.B. CIVIL WRIT PETITION NO.4127/2005

Narendra Arya and another vs. Onkar Das and another.

Date : 19.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. D Moolchandani, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order 23.5.2005 by which the trial court closed the plaintiff's/ petitioner's evidence.

According to learned counsel for the petitioner, the plaintiff witness Mahendra Kumar was sick on 23.5.2005 and, therefore, could not appear before the court below. It is also submitted that the suit for malicious prosecution was filed by the plaintiffs and one of the plaintiff has been examined.

It appears from the order-sheet dated 10.3.2005 that the Court passed the order that in case the witnesses will not be produced, the evidence of the plaintiff shall stand closed automatically.

In the facts and circumstances of the case, it will be proper for the appellate court to examine whether there was sufifcient cause for non-appearance of the plaintiff Mahendra Kumar before the trial court or not and this Court

is not inclined to interfere in the impugned order looking to the facts of the case.

In view of the above, this writ petition, having no merit, is hereby dismissed. However, the petitioner will be free to challenge the impugned order in appeal in case any cause survives for the petitioner to do so.

(PRAKASH TATIA), J.

S.Phophaliya